UNFUNDED MANDATES/Public-Private Parity by Weakening Bill

SUBJECT: **Unfunded Mandate Reform Act of 1995 . . . S. 1. Kempthorne motion to table the Lieberman perfecting amendment No. 151 to the Gorton perfecting amendment No. 31, as amended, to the language proposed to be stricken by the committee amendment beginning on page 25, line 11, as modified.**

ACTION: MOTION TO TABLE AGREED TO, 53-44

SYNOPSIS: Pertinent votes on this legislation include Nos. 15-28, 30-41, 43-45, and 47-61.

As reported by the Governmental Affairs Committee and the Budget Committee, S. 1, the Unfunded Mandate Reform Act of 1995, will create 2 majority (51-vote) points of order in the Senate. The first will lie against the consideration of a bill or joint resolution reported by an authorizing committee if it contains mandates and if Congressional Budget Office (CBO) cost estimates on those mandates are unavailable. The second point of order will lie against the consideration of a bill, joint resolution, motion, amendment, or conference report that will cause the total cost of unfunded intergovernmental mandates in the legislation to exceed $50 million.

The committee amendment beginning on page 25, line 11, as modified, would strike the provision that would give the Governmental Affairs Committee in the Senate, and the Committee on Government Reform and Oversight in the House, the authority to make the final determination on whether proposed legislation contains a Federal mandate. It would also strike the provision providing that the levels of Federal mandates for a fiscal year will be determined based on the estimates of the respective budget committees. (The Budget Committee, which considered the bill sequentially in accordance with Budget Act requirements, struck these provisions with this one amendment). As modified, the amendment would insert language to provide that in the Senate, the Presiding Office will consult with the Committee on Governmental Affairs to the extent practicable on questions concerning whether a mandate exists in a pending matter. It would also add that in the Senate, the levels of Federal mandates for a fiscal year will be determined based on estimates made by the Budget Committee.

The Gorton amendment to the language proposed to be stricken by the committee amendment, as amended (see vote Nos. 23-25), would express the sense of the Senate: that Goals 2000 history standards that were developed before February 1, 1995 should not

(See other side)

YEAS (53)

Republicans (52 or 100%)		Democrats (1 or 2%)
Abraham	Hutchison	Heflin
Ashcroft	Inhofe	
Bennett	Jeffords	
Bond	Kassebaum	
Brown	Kempthorne	
Burns	Kyl	
Chafee	Lott	
Coats	Lugar	
Cochran	Mack	
Cohen	McCain	
Coverdell	McConnell	
Craig	Murkowski	
D'Amato	Nickles	
DeWine	Packwood	
Dole	Pressler	
Domenici	Roth	
Faircloth	Santorum	
Frist	Shelby	
Gorton	Simpson	
Gramm	Smith	
Grams	Snowe	
Grassley	Specter	
Gregg	Stevens	
Hatch	Thomas	
Hatfield	Thompson	
Helms	Warner	

NAYS (44)

Republicans (0 or 0%)	Democrats (44 or 98%)	
	Akaka	Hollings
	Baucus	Inouye
	Biden	Kennedy
	Bingaman	Kerrey
	Boxer	Kerry
	Bradley	Kohl
	Breaux	Lautenberg
	Bryan	Levin
	Bumpers	Lieberman
	Byrd	Mikulski
	Campbell	Moseley-Braun
	Conrad	Moynihan
	Daschle	Murray
	Dodd	Nunn
	Dorgan	Pell
	Exon	Pryor
	Feingold	Reid
	Feinstein	Robb
	Ford	Rockefeller
	Glenn	Sarbanes
	Graham	Simon
	Harkin	Wellstone

NOT VOTING (3)

Republicans (1)	Democrats (2)
Thurmond-[2]	Johnston-[2]
	Leahy-[2AN]

EXPLANATION OF ABSENCE:
1—Official Buisiness
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

be approved or certified; that Goals 2000 history standards should not be based on standards developed primarily by the National Center for History in the Schools prior to February 1, 1995; and that any recipient of funds for the development of Goals 2000 history standards should have a decent respect for the contributions of western civilization, and United States history, ideas, and institutions, to the increase of freedom and prosperity around the world. Further, it would express the sense of the Senate: that States should not shift costs to local governments, which often leads to property tax increases; that State legislatures should not impose unfunded mandates on local governments without first fully considering those mandates; and that a primary objective of this Act should be to reduce taxes and spending at all levels and to end the practice of shifting costs with little or no benefit to taxpayers. Finally, the amendment would express the sense of the Senate that "the United States Attorney General should fully enforce the law and protect persons seeking to provide or obtain, or assist in providing or obtaining, reproductive health services from violent attack."

The Lieberman amendment would add that the term "Federal intergovernmental mandate" would not include any mandate that "would apply in the same manner to the activities, facilities, or services of State, local, or tribal governments and the private sector." (Thus, no point of order would lie against an unfunded intergovernmental mandate if that mandate also applied to the private sector).

Debate was limited by unanimous consent. Following debate, Senator Kempthorne moved to table the amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

The Lieberman amendment at first glance seems to be simply about fairness, but its actual effect would be to gut S. 1. The amendment would remove the funding requirement for intergovernmental mandates if those mandates were to apply to the private sector as well. Our colleagues have contended that in those areas in which private businesses and the government provide the same services, like trash collection, the government should not receive subsidies that give it a competitive advantage. They have also contended that areas in which both the public and private sectors operate are few and far between. Both contentions are false.

The first problem is that our colleagues fail to recognize the nature of the "competition" between the private and public sectors. Our colleagues seem to view governments as acting the same as private businesses. However, governments do not operate like private, bottom-line businesses--efficiency and effectiveness are not neatly measured by profit-and-loss statements. Instead, a government can create customers for its services by mandating that it will be the sole provider, it can set the fees it wishes to charge arbitrarily (and its customers must pay), and it can impose taxes to subsidize services (or provide them "free" of charge) if it so desires. Ultimately, taxpayers, including private businesses that "compete" with the government, are responsible for paying for government services. People dearly enjoy receiving "free" or subsidized services, but they sure hate paying taxes for them. The dodge that the Federal Government has devised is for it to order that the services be given, and to make State and local governments responsible for collecting the taxes to pay for those services. The Federal Government thus gets the credit for mandating services, and State and local governments get blamed for raising taxes. Local businesses pay a large share of these local tax hikes that are caused by mandates from Congress. These businesses thus are not clamoring for us to impose burdens equally on both them and local governments because they ultimately end up paying for both sets of burdens.

The contention that the Lieberman amendment would have only a modest effect is equally false. Virtually every government function short of enacting laws has a private sector counterpart. Government fire departments "compete" with private, for-profit fire departments; building inspectors compete with privately contracted building inspection services; public road construction crews compete with private construction contractors and even with private toll roads; public schools compete with secular and religious private schools; public hospitals compete with private hospitals; public libraries compete with bookstores and video rental stores; public swimming pools and golf courses compete with private clubs; municipal revenue collection departments compete with private collection agencies; and police departments compete with private security agencies, which are often even hired by the governments that run the police departments. The overlap that our colleagues describe is not small; it is the norm.

In a few, isolated instances it may be preferable not to fund an intergovernmental mandate. S. 1, as drafted, will provide for such instances. Committees will be required to examine the competitiveness issue for each proposed intergovernmental mandate and to explain the results of their studies. Thus, on a case-by-case basis, this bill already will allow ample opportunity to waive the funding requirement for intergovernmental mandates, if appropriate.

A blanket waiver, though, would be totally inappropriate. Though our colleagues claim that the Lieberman amendment would only provide a waiver for a minority of public mandates, we are convinced otherwise. In our estimation, it would render the point of order against unfunded intergovernmental mandates virtually meaningless. We therefore urge the resounding rejection of this amendment.

Those opposing the motion to table contended:

Last year we were cosponsors of a bipartisan proposal to limit unfunded mandates. That proposal has been reworked this year and offered as S. 1. As a result of that reworking, we are no longer cosponsors, and may not even be willing to vote for final passage of S. 1 unless changes are first made. One very needed change is proposed by the Lieberman amendment. As the bill is currently

drafted, whenever a mandate is imposed on State and local governments above a threshold amount, the Federal Government will be required to pay fully the costs of that mandate. If it provides inadequate funding, the Federal agency responsible for administering the mandate will be required either to reduce or suspend the mandate. The Lieberman amendment would get rid of this requirement in those instances in which the proposed mandate will apply equally to the public and private sectors.

This amendment would have very little effect on the operation of S. 1. Most intergovernmental mandates apply to functions that are distinctly governmental. Big-ticket items for State and local governments include Medicaid, Aid to Families with Dependent Children, child nutrition, food stamps, social service block grants, vocational rehabilitation State grants, foster care, adoption assistance and independent living, family support welfare services, and child support functions. Mandates in these areas do not apply to the private sector. Those mandates that apply to both the public and private sectors, such as clean air mandates on incinerators or clean water mandates on waste streams, do not greatly burden State and local governments. For example, Senator Bond, in his testimony at a hearing on S. 1, informed us that the total yearly cost of environmental mandates on Missouri is $3.5 million, but the total cost of all Federal mandates on his State is over $350 million. Thus, the Lieberman amendment would remove the funding requirement for only a few percent of all intergovernmental mandates.

This removal is just. In areas in which governments and private enterprises compete, private enterprises should not be forced to compete on unequal terms. For example, private utilities should not have to meet more stringent, and costly, clean air requirements than public utilities, but, absent Federal funding for a new clean air mandate, they would, because without funding the mandate would not apply to public utilities. Thus, unless we pass the Lieberman amendment, S. 1 will have the unintended result of favoring the increased socialization of areas of the economy that have so far been only partially taken over by State and local governments.

We do not favor that result. We prefer a free marketplace with fair competition. Therefore, we urge the defeat of the motion to table the Lieberman amendment.